aromatic tricyclic compounds containing nicotinonitrile rings.

Moreover, there is a small, common core structure of the generic formula 1 that lends itself to a relatively single search of the art. The compounds of Groups I and III-IX are classified in class 546. Consequently, the Examiner will replicate his efforts when he has to search class 546 for each of these eight groups.

While it is appreciated that the Examiner will consider at least one method of use with the elected compound group, it seems reasonable to include the entire Group XI of Claims 22-33 in this application in accordance with the previous action taken by the U.S. Patent and Trademark Office in the parent application that issued as U.S. Patent No. 6,638,929. Applicants respectfully ask to be afforded the same treatment in this divisional application as the parent. Plus, it is further pointed out that the methods are significantly related and unified by virtue of the same pharmacological property of the claimed compounds in being able to inhibit protein tyrosine kinase.

It is also permissible to keep the method and compound claims in the same application as the process Claim 35 of Group XII. There is no statutory prohibition against these categories (*e.g.*, compounds, methods of use and process for preparing compounds) residing in the patent together. In fact, the U.S. Patent and Trademark Office will grant patents that contain compound, method and process claims. Thus, Applicants urge the Examiner to withdraw the requirement to restrict this application to a single group.

In terms of equitable considerations, the restriction requirement effectively denies Applicants their substantive right to decide what they regard as their invention. By the Office's piecemeal approach to prosecution, Applicants would have to file, prosecute and maintain several applications at great time and expense to issue several separate patents. Practically speaking, it is not likely that Applicants could afford that expensive route. The restriction requirement, as it now stands, will effectively and unfairly force the Applicants to forfeit patent coverage of many important aspects of their invention. The substantial cost benefit of keeping this application intact is combined with the belief that performing most, if not all, of the searches will not involve an undue burden on the Office, particularly in view of the previous search and allowance of U.S. Patent No. 6,638,929 made by the same Examiner in this divisional case. Thus, Applicants urge the Examiner to withdraw the requirement to restrict this application or, at

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the very least, to modify the overwhelming number of groups to those compounds classified in class 546 (Groups I and III-IX) and their methods of use (Group XI).

Consistent with the foregoing remarks but to satisfy the requirement of 37 C.F.R. § 1.143, Applicants provisionally elect with traverse to prosecute the invention of Group IV (Claims 10 and 19), the pharmaceutical composition (Claim 34) to the extent of the elected compounds and the single method of treating, inhibiting the growth of or eradicating a neoplasm (Claim 22). It is respectfully requested that the Examiner kindly reconsider, at the very least, examining Groups I, III, V-IX and XI along side Group IV in this case.

To comply with the Examiner's requirement, Applicants further provisionally elect the single compound of 8-(4-chloro-5-methoxy-2-methylanilino)-3-[2-(4-morpholinyl)ethyl]-3H-imidazo[4,5-g]quinoline-7-carbonitrile of Example 57 and Claim 20(o) with traverse. As requested by the Examiner, Applicants have provided an exact definition of this compound in formula 1 and its structure in the below Appendix, incorporated herein by reference thereto.

Applicants retain the nonelected subject matter to afford the Examiner the opportunity to reconsider the restriction requirement and, thus, for future consideration on the merits. It is to be understood that the provisional election is for procedural purposes only and that Applicants reserve the right to file a divisional application directed to the nonelected subject matter of this invention or to file a petition in the event that the restriction requirement is upheld.

Favorable treatment is respectfully solicited.

Respectfully submitted,

WYETH

Date: July 6, 2004

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This correspondence is being deposited with the U.S. Postal Service on July 6, 2004 to be delivered by the "Express Mail Post Office to Addressee" service under Mailing Label Number ER586233555US addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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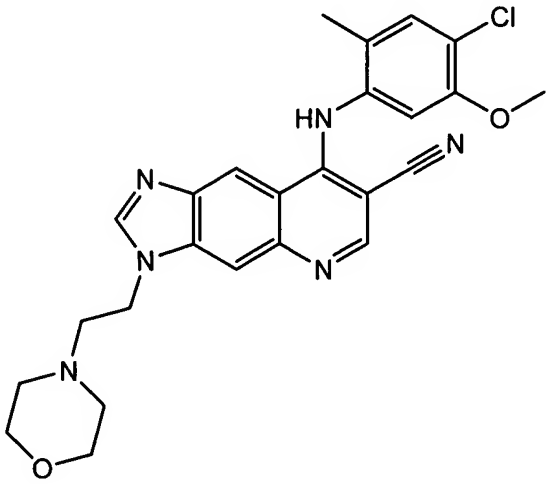
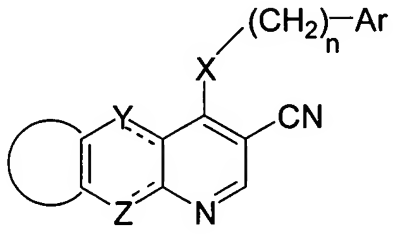
APPENDIX

The compound of Example 57 and Claim 20(o) provisionally elected with traverse is:

8-(4-chloro-5-methoxy-2-methylanilino)-3-[2-(4-morpholinyl)ethyl]-3H-imidazo[4,5-g]quinoline-7-carbonitrile



The protein kinase inhibitor is defined by the following structure of formula **1**:



1

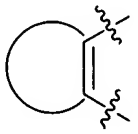
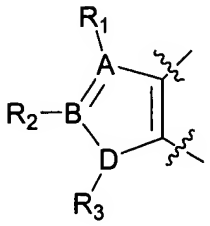
wherein:

Ar is a phenyl ring substituted with 2-methyl, 4-chloro, 5-methoxy substituents;

n is 0;

X is NH;

Y and Z are both carbon; the ring structure of formula **1** then being a fused 5,6,6 tricycle,

 is  ;

A and D are each N,

B is carbon;

R_1 is not present;

R_2 is hydrogen;

R_3 is:

$$Het\text{-}(C(R_6)_2)_q\text{–}W\text{-}(C(R_6)_2)_k\text{–}$$

wherein:

W is a bond;

Het is morpholine;

R_6 is hydrogen;

$k = 2$;

$q = 0$;

or a pharmaceutically acceptable salt thereof.